

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 2073 OF 1998.

1. M/s.The Standard Batteries Ltd.,
a public limited company registered
under Companies Act, 1956 and having
their registered office at Vakola,
Santacruz, Mumbai 400 055.
2. M/s.United India Insurance Co.Ltd.,
a body corporate, subsidiary of the
General Insurance Corporation of
India having their registered and
head office at 24, While Road,
Madras 600 014, and one of their
Mumbai Divisional Office No.8 at
Union Co-operative Insurance Building
Sir P.M.Road, Fort, Mumbai 400 001. ... Plaintiffs.

Versus.

M/s.Shree Chawneswar Road Lines,
carrying on their business as common
carriers and having their office at
Wadi Bunder Good Depot, C.Rly,Shed,
No.12, Mumbai 400 010. ... Defendant.

Shri V.S.Amin i/by M/s.V.S,Amin & Co. for the
Plaintiffs.
None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. The suit is listed under the caption of
"Undefended suits for ex-parte decree". The learned
Counsel appearing for the Plaintiff has tendered on
record affidavit in lieu of examination-in-chief of Shri
Atul Ashok Mirlekar, Administrative Officer of the 2nd
Plaintiff. The said affidavit is marked "X" for
identification and is taken on record. Six original

documents are also produced along with a list. The original documents along with the list are marked "Y" (collectively) for identification and is taken on record.

2. According to the case of the Plaintiffs the 1st Plaintiff hired services of the Defendant on 10th August 1995 and entrusted to their charge two consignments of 300 fully charged batteries of the Type N702/BT and one packet of G/Cards for carriage and safe delivery by road ex-Mumbai to Pithampur. The consignments were valued at Rs.3,64,067/- as per the invoice dated 20th July 1995. The Defendant accepted the said consignments and booked under their consignment note No.8369 dated 12th July 1995 for carriage from Mumbai to Pithampur.

3. According to the case of the Plaintiffs, at the agreed destination, the Defendant delivered 82 batteries in damaged condition. According to the case of the Plaintiffs, the Defendant admitted the said damage in their letter dated 21st August 1995.

4. According to the Plaintiffs, the said consignment was duly insured with the 2nd Plaintiffs. The 2nd Plaintiffs at the instance of the 1st Plaintiff appointed an independent surveyor to assess the cause and extent of loss. The said surveyor submitted a report dated 20th October 1995.

5. The 1st Plaintiff by a letter dated 17th September 1995 had lodged a monetary claim with the Defendant for the said loss caused to the said consignment. By notice dated 17th January 1997, the Defendant was called upon to pay the sum of Rs.80,646/- being the loss suffered by the Plaintiffs.

6. The 2nd Plaintiff paid the said amount to the 1st Plaintiff as per the policy of insurance and thereafter on 24th January 1997, the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as a special power of attorney authorising the 2nd Plaintiff to recover the said amount from the Defendant. As the amount was not paid by the Defendant, the present suit has been filed for recovery of the amount along with interest thereon at the rate of 18% per annum.

7. The original consignment note dated 10th August 1995 issued by the Defendant is placed on record and is proved by the evidence of Shri Atul Ashok Mirlekar. The letter dated 17th August 1995 sent by the Defendant to the 1st Plaintiff is also duly proved. In the said letter the Defendant contended that the alleged damage to the consignment could have been caused in the normal course of transit due to failure of the material to

withstand the motions involved in a long road journey. It was alleged that the goods are transported at the owners risk. The survey report dated 20th October 1995 submitted by M/s.P.B.Desai, the Surveyor appointed by the 2nd Plaintiff has been also produced and proved. The claim of the Plaintiffs has been duly proved by the affidavit in lieu of evidence of Shri Atul Ashok Mirlekar. The original documents are also proved.

8. The Plaintiffs have claimed interest at the rate of 18% per annum. Considering the facts and circumstances the interest will have to be granted at the rate of 9% per annum from the date of institution of the suit till realisation.

9. Hence the suit is decreed in terms of prayer clauses (a) and (b) of the plaint. However, the interest payable will be at the rate of 9% per annum from the date of institution of the suit till realisation or payment.

10. The Plaintiffs will be entitled to refund of Court fees, if any, as per the Rules.

11. Certified copy is expedited.

Judge .